

BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:)
)
ILLINOIS COMMERCE COMMISSION,)
On Its Own Motion,)
)
vs.) No. 01-0707
)
PEOPLES GAS, LIGHT AND COKE)
COMPANY.)
)
Reconciliation of revenues)
collected under gas adjustment)
charges with actual costs)
prudently incurred.)

Chicago, Illinois
July 21, 2004

Met, pursuant to adjournment, at 3:00 p.m.

BEFORE :

Ms. Claudia Sainsot, Administrative Law Judge

APPEARANCES :

McGUIRE WOODS, LLP, by
MR. THOMAS R. MULROY and MS. MARY KLYASHEFF
77 West Wacker Drive
Suite 4400
Chicago, IL 60601
(312) 849-8272
for Peoples Gas, Light and Coke Company;

1 APPEARANCES (cont.):

2 MS. JULIE L. SODERNA and MR. STEPHEN WU
3 208 South LaSalle Street
4 Suite 1760
5 Chicago, IL 60604
6 (312) 263-4282
7 for the Citizens Utility Board;

8 MR. RANDOLPH R. CLARKE, MR. MARK G. KAMINSKI and
9 MS. JANICE A. DALE
10 100 West Randolph Street
11 11th Floor
12 Chicago, IL 60601
13 (312) 814-8496
14 for the People of the State of Illinois;

15 MR. RONALD D. JOLLY and MR. CONRAD R. REDDICK
16 30 North LaSalle Street
17 Suite 900
18 Chicago, IL 60602
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20 for the City of Chicago;

21 MS. LEIJUANA DOSS
22 69 West Washington
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26 for the People of Cook County;

27 MR. JAMES E. WEGING and MR. SEAN BRADY
28 160 North LaSalle Street
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30 Chicago, IL 60601
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32 for ICC Staff witnesses.

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I N D E X

Re- Re- By
Witnesses: Direct Cross direct cross Examiner

None.

E X H I B I T S

Number For Identification In Evidence

None.

1 JUDGE SAINSOT: By the authority vested in me
2 by the Illinois Commerce Commission, I now call
3 Docket No. 01-0707. It is the Illinois Commerce
4 Commission, On Its Own Motion, versus Peoples Gas,
5 Light and Coke Company, and it is the reconciliation
6 of revenues collected under gas adjustment charges
7 with actual costs prudently incurred.

8 Will the parties identify themselves
9 for the record.

10 MS. KLYASHEFF: Appearing for the Peoples Gas,
11 Light and Coke Company, Thomas Mulroy and Mary
12 Klyasheff with McGuire Woods, 77 West Wacker,
13 Chicago, 60601.

14 MS. DOSS: Leijuana Doss, Cook County State's
15 Attorney's Office, 69 West Washington, Suite 700,
16 Chicago, Illinois, 60602.

17 And also, for the record, we did file
18 a petition to intervene and that was on December 5th
19 of 2001.

20 MR. JOLLY: On behalf of the City of Chicago,
21 Ronald D. Jolly and Conrad R. Reddick, 30 North
22 LaSalle, Suite 900, Chicago, Illinois, 60602.

1 MR. CLARKE: On behalf of the People of the
2 State of Illinois, Randolph Clarke, Janice Dale and
3 Mark Kaminski, 100 West Randolph Street, 11th Floor,
4 Chicago, Illinois.

5 MS. SODERNA: Appearing on behalf of the
6 Citizens Utility Board, Julie Soderna and Stephen Wu,
7 208 South LaSalle, Suite 1760, Chicago, Illinois,
8 60604.

9 MR. WEGING: Appearing on behalf of the
10 Commission staff witnesses, James E. Wering and
11 Sean R. Brady, 160 North LaSalle Street, Suite C-800,
12 Chicago, Illinois, 60601, (312) 793-2877.

13 JUDGE SAINSOT: Are there any further
14 appearances?

15 Let the record reflect that there are
16 none.

17 Okay. Before me are Staff's and CUB's
18 motion to compel and Peoples' motion seeking a
19 protective order. I've asked the parties to put
20 whatever objections they have to me and show me
21 specifically what they're objecting to or what
22 they're seeking to compel. And I've also asked the

1 parties -- this is just for the record -- to address
2 their concerns regarding a protective order, address
3 those concerns in relation to a draft order I
4 circulated at a hearing last week.

5 All right. And I apologize for
6 reading from my notes. I didn't have time to type
7 everything up all nice and neat.

8 I'd like to take the protective order
9 first. I'll first address the CUB and City
10 arguments. CUB and the City argue that they would
11 have to consult with Peoples pursuant to the
12 procedure set forth in the draft order I circulated
13 while preparing for trial. And they weren't specific
14 but I can only envision two instances where this
15 would occur. And one is when you consult with a --
16 you have a consulting witness and the other would be
17 maybe prior to trial if you thought that that order
18 applied.

19 I'm not quite sure where to begin.
20 Typically your employees and your consulting
21 witnesses are considered to be a party, so I didn't
22 include that in the order, but I didn't include

1 secretaries either, so it didn't occur to me that
2 that would be an issue. However, just to make it
3 clear, I will put some language in there specifically
4 including employees and consulting witnesses.

5 Also, prior to trial, I would not
6 consider it to be publication, so you wouldn't have
7 to ask Peoples permission to use documents to bring
8 them to trial. You wouldn't have to go through that
9 procedure where you notify them ahead of time. You
10 would have to go through that procedure to mark
11 things confidential if they were proprietary or
12 attorney-client. So since that doesn't seem to be
13 clear, I'll stick something in the order clarifying
14 that publication to third parties does not include
15 trial.

16 This is in response to general
17 arguments that CUB and the City made. The procedure
18 in the order I drafted allows for full disclosure of
19 anything that's truly not confidential; it just
20 doesn't provide for instantaneous disclosure of those
21 items. And I still think having a procedure in place
22 is preferable to going through those boxes and

1 segregating everything especially at this point
2 because it will have the effect of delaying the
3 trial, you know.

4 Also, I think it's worth pointing out
5 that the order only applies to items tendered by
6 Peoples after the re-opening of discovery in February
7 of 2004, and it only applies to nonpublic
8 information. And it only really protects that which
9 is truly proprietary and truly attorney-client which
10 is a very small portion of the records, as far as I
11 can tell from what you've said. I haven't looked at
12 them, but that's the impression I get from reading
13 the pleadings.

14 CUB and the City argue that the
15 protective order contravenes the Commission decision
16 in Cass versus Long Distance Services, 1999 Ill. PUC
17 Lexis 206. But the difference between my order and
18 the situation in Cass is apparent. My order doesn't
19 keep anything that is truly confidential away from
20 the public; it just provides a little mechanism to
21 make sure that it's really confidential. That wasn't
22 the case in Cass. And it also provides that

1 ultimately if there is a dispute, there's a procedure
2 in place to resolve that dispute and that is that I
3 make the call.

4 So for the record, I don't -- I'm not
5 sure I understand CUB and the City's argument that
6 the procedure cannot obviate the need for a separate
7 substantive factual determination. If you truly have
8 a dispute, the procedure is in place for me to take
9 over. But there's also a procedure in place so that
10 things that are obviously attorney-client and
11 obviously or obviously not attorney-client or
12 proprietary can go one path or another.

13 And I also saw mention in CUB and the
14 City's pleading reference to the fact that Peoples
15 designated documents as confidential. And for the
16 record, I really don't find that to be too relevant.
17 The document is either confidential or it's not.
18 Just because they designate it confidential doesn't
19 make it confidential, and I think Peoples has
20 admitted that. So that doesn't really make a
21 difference.

22 Okay. On Page 19 of CUB and the

1 City's lengthy pleading, CUB and the City argue that
2 the information at issue is obsolete and therefore it
3 shouldn't be protected. You know, I have to step
4 back a minute and remind you that you were quite
5 willing to have the old protective agreement cover
6 this situation, so obviously there is something in
7 there worth protecting. You can't have it both ways.

8 CUB and the City also argue that
9 five years is too long for proprietary protective
10 treatment. According to CUB and the City, two years
11 is standard at the ICC. And actually we routinely
12 grant orders regarding proprietary treatment of
13 annual reports for five years. And if you look at
14 the regs, specifically 83 Illinois Administrative
15 Code 200.430(b) which covers protective orders, the
16 length of time is five years. However, since at
17 least three years have already passed, I will shorten
18 the order to reflect two years from the date of the
19 final order which still gives an approximation of
20 five years regarding proprietary information.
21 Attorney-client will remain sealed forever.

22 CUB and the City argue that the

1 wording of the penalty is vague and, in retrospect, I
2 agree with that. A fine of \$1,000 per violation per
3 day is vague. It would be difficult to determine, as
4 CUB points out, how much would be due if publication
5 were, for example, to a newspaper. Therefore, I will
6 omit the per day, and it will be per unauthorized
7 disclosure -- I mean, I will admit the per
8 unauthorized disclosure language.

9 CUB and the City also contend that
10 imposing any penalty is unprecedented in Commission
11 history. And that may very well be true. But there
12 is absolutely no point in having an agreement to do
13 something if there isn't a penalty for failure to do
14 something. There's absolutely no incentive to comply
15 with the order if it doesn't hurt when you fail to
16 comply with it.

17 CUB and the City also argue that there
18 is no Commission authority for penalizing
19 nonutilities in the Public Utilities Act. I
20 disagree. If you look at Sections 5-202 and 5-203,
21 the Commission has the power to fine someone for
22 failure to abide by an order. And 5-203 makes it a

1 Class A misdemeanor. So I think I do have that power
2 as well as the inherent powers that come from what I
3 have to do to administer my docket. I don't think
4 there's anything in the Public Utilities Act that
5 gives me the power to DWP a case and I DWP cases all
6 the time. I enter default judgments all the time.
7 It's what I have to do to make sure that my docket
8 runs along.

9 On Page 17 of the City's and CUB's
10 pleading, they state essentially that Peoples is a
11 monopoly so it has no competitive harm. I disagree.
12 Unlike the incumbent local exchange carrier in Cass,
13 Peoples has competitors for the procurement of gas.
14 There are entities including, but not limited to,
15 other gas buyers who would benefit financially from
16 the information about how Peoples buys its gas.
17 Also, the information provided here is not just about
18 Peoples Gas, Light and Coke Company; it concerns
19 Peoples' affiliates, and some of those affiliates do
20 have competitors that would benefit from that
21 information.

22 On Page 24 CUB and the City argue that

1 the likely volume of materials that actually are
2 privileged or proprietary is small and therefore they
3 will suffer an unnecessary burden. If it's really
4 true that there's such a little amount of paper, then
5 Peoples has been provided with the financial
6 incentive in my order to respond quickly to any
7 request made for publication of a document. So there
8 should be little remaining for anyone to fight about.
9 I also note that implicit in this representation is
10 the fact that some items in the 45 boxes, or however
11 many boxes there are, of documents are
12 attorney-client or are proprietary.

13 On Page 25 CUB and the City argue that
14 Peoples should have the onus to identify what
15 documents would fall within the definition of
16 attorney-client or proprietary. But it does.
17 Counsel for Peoples still has to clear the documents,
18 redact information or bring the matter before me.
19 What CUB and Peoples (sic) ask for is for Peoples to
20 sort through all of the documents now and bring what
21 is protected before me. That task is burdensome, and
22 it will surely delay the trial. And attorneys know

1 when something is protected by the attorney-client
2 privilege most of the time. And most attorneys that
3 have practiced here for a number of years or have
4 worked in commercial litigation settings know
5 proprietary information when they see it.

6 Finally, CUB and the City argue that
7 Peoples has the right to unilaterally redact
8 information and therefore the parties must agree on
9 the redactions made by Peoples. I wouldn't -- let me
10 think of how to explain this. I wouldn't think that
11 there would be much agreeing on something like that.
12 Any party disagreeing with a redaction made by
13 Peoples' counsel should bring the matter before me,
14 and I will decide what gets redacted in an in camera
15 hearing. I thought that was obvious, but I'll add
16 some language to that effect.

17 All right. So I'm done with Peoples
18 and CUB. Okay. Staff's arguments.

19 Staff argues that it shouldn't be
20 subjected to the protective order because there are
21 already criminal penalties for the unapproved
22 divulgence of information that has been obtained by

1 Staff during an investigation, specifically 220 ILCS
2 5-5 -- 5/5-108. I agree. Staff's proposed language
3 on this issue will be incorporated into the
4 protective order.

5 Staff also suggests limiting the order
6 to protect proprietary and attorney-client privileged
7 information. It already does that, although some of
8 Staff's suggestions regarding the limitations I will
9 adopt. Specifically Staff suggests adding the word
10 "revealed" in the definition of proprietary
11 information. It will be added.

12 Staff also suggests rewording the
13 definition of attorney-client privilege in the
14 protective order, and Staff's suggestions will be
15 incorporated because they are more precise.

16 Staff further suggests excluding
17 documents that are subpoenaed by governmental bodies.
18 I think subpoenas by law enforcement agencies would
19 be exempt from this anyway, but I'll stick something
20 in there; however, I am not going to exempt subpoenas
21 drawn up for civil suits. There's absolutely no
22 reason to do so.

1 MR. MULROY: Could you just clarify that
2 subpoenaed by governmental agencies sentence?

3 JUDGE SAINSOT: Right. The governmental agency
4 would include prosecutorial agencies.

5 MR. MULROY: But if the grand jury -- a grand
6 jury subpoenas attorney-client privileged
7 information, then it's excluded from the protective
8 order. That's the part I don't get. I'm just
9 unclear on what you just said.

10 JUDGE SAINSOT: Right. It would be excluded
11 from the protective order. It's my understanding and
12 I don't -- I can't cite anything to you off the top
13 of my head, but I think it would be anyway. I think
14 a criminal subpoena would override the protective
15 order.

16 MR. MULROY: I think I'm misunderstanding you,
17 so I apologize. Let's say a grand jury subpoenaed
18 our financial statements and let's say we gave them
19 our financial statements in this proceeding, would
20 that subpoena take the financial statements out of
21 your protective order for this purpose?

22 JUDGE SAINSOT: Yes.

1 MR. MULROY: And they wouldn't be protected
2 because the federal grand jury, of course, or any
3 grand jury, has secrecy which is built-in
4 confidentiality.

5 JUDGE SAINSOT: Uh-huh.

6 MR. MULROY: I mean, this hasn't happened. I'm
7 just --

8 JUDGE SAINSOT: You're just working it through.

9 MR. MULROY: It was just a curve ball.

10 JUDGE SAINSOT: Right, right. No, no. That's
11 fine. That's fine. But it would also include other
12 situations besides a federal grand jury -- the
13 State's Attorney's Office, the AG's office. What it
14 wouldn't include would be somebody filing suit in the
15 Daley Center.

16 MR. CLARKE: Your Honor, just to be clear,
17 though, you're saying that documents that were
18 subpoenaed by any law enforcement agency would be
19 subject to -- or would be exempted under this?

20 JUDGE SAINSOT: Right. I think they are
21 anyway.

22 MR. MULROY: But, no, that means that they

1 could publish anything that was subpoenaed by a law
2 enforcement agency. You can't mean that, can you?

3 JUDGE SAINSOT: No, no, I didn't mean that.
4 What I mean is law enforcement has access to those
5 documents.

6 MR. MULROY: That's what I thought you were
7 talking about.

8 JUDGE SAINSOT: Right.

9 MR. MULROY: In other words, this protective
10 order only covers the parties before you, not some
11 law enforcement parties who aren't here.

12 JUDGE SAINSOT: Right.

13 MR. MULROY: That's what I thought you meant.

14 JUDGE SAINSOT: Right. And, again, the reason
15 I didn't include that is because I don't think my
16 protective order -- I think law enforcement
17 overrides. That was always my understanding. But I
18 will put something in there clarifying that law
19 enforcement has access to these documents but, again,
20 I see no need to exempt civil suits.

21 Where was I? Okay. So those are
22 Staff's. The AG.

1 The AG points out that there is
2 already a protective agreement in place so the AG
3 reasons that nothing additional is needed. However,
4 the existing agreement has no penalties for violating
5 it. And while I can appreciate that the AG has not
6 violated the existing agreement, I can also
7 appreciate that counsel for Peoples would want to
8 have an agreement that had some teeth in it.

9 The AG also argues that the order is
10 deficient in that it doesn't apply the Cass
11 standards -- and I think I mentioned this earlier a
12 little bit -- and it doesn't require an evidentiary
13 hearing to have the information protected. It does
14 require an evidentiary hearing, however, if there is
15 a dispute about what should be protected. It also
16 lets the parties recognize themselves what is
17 proprietary and what is subject to the
18 attorney-client privilege.

19 I might add that the agreement the AG
20 signed did not require Peoples to make an evidentiary
21 showing either, and it required any disputed matter
22 to come before an administrative law judge. So I

1 don't really see that as being a distinguishing
2 factor.

3 So these are my comments. I -- thank
4 goodness I wrote notes -- will incorporate the
5 changes that I mentioned in the protective order, and
6 then I should be able to issue it in a few days.

7 MR. CLARKE: Your Honor, I'd like to be heard
8 on this matter.

9 Just for the record, the agreement
10 that the AG has in place with Peoples Gas is
11 currently in place and has been in place for -- since
12 October 22, 2002. This is an agreement that was
13 negotiated between the parties. The negotiations
14 weren't haphazard or accidental. They took place
15 over the course of several weeks.

16 The penalty provisions that -- while
17 the agreement may not have any direct monetary
18 penalty in it, it says that Peoples has whatever
19 legal avenues are available to it available, and
20 importantly that's what Peoples negotiated; that's
21 what they agreed to.

22 JUDGE SAINSOT: Well, I understand that. But I

1 also understand that that's the way things have
2 traditionally been done at the ICC, and I have also
3 seen situations where that kind of order was violated
4 or that kind of agreement was violated and there's
5 nothing that can be done. How would you -- what
6 would you do, go to the Daley Center?

7 MR. CLARKE: Well, if Peoples was unsatisfied
8 with the agreement that they negotiated and
9 determined were appropriate terms by agreement with
10 us, well, that agreement -- that agreement does
11 contain a mechanism for changing it.

12 And specifically the agreement that we
13 have, the contract between us says that this
14 agreement constitutes the entire agreement with the
15 party -- which is referring to Peoples -- regarding
16 information claimed to be confidential and
17 proprietary. All other agreements with respect to
18 the proceedings and information related thereto
19 between Peoples and the Attorney General regarding
20 disclosure of confidential and proprietary
21 information are hereby superseded by this agreement
22 and no amendments, modifications or rescissions of

1 this agreement shall be made unless such amendments,
2 modifications or rescissions shall be made in writing
3 and signed by duly authorized agents representative
4 of both Peoples and the Attorney General.

5 So if they wanted to change the
6 agreement or add some penalties or do something else,
7 they could and should, and they're obligated under
8 the agreement to come and talk to us about it. And
9 this binding contract that we have between the AG and
10 Peoples still exists, is still in effect under
11 Illinois law, and that's how -- if a change was
12 required, that's how the change should have been
13 made.

14 JUDGE SAINSOT: Ms. Klyasheff.

15 MS. KLYASHEFF: The Commission's rules provide
16 for the entry of protective orders. They're not
17 agreements. The Company at this point sought a
18 protective order. The agreement still remains in
19 place for pre-February 10, 2004 discovery if I'm
20 understanding the proposed protective order.

21 JUDGE SAINSOT: Oh, and I should mention --
22 apparently I skipped over it. Staff had some concern

1 about some things that were pre- --

2 MR. BRADY: Uh-huh, yes.

3 JUDGE SAINSOT: I will exclude those that are
4 pre-February 10, 2004. You want some language in
5 there specifically excluding beyond --

6 MR. BRADY: We identified specific documents
7 responsive to data requests in our document. So if
8 those are what you were referring to, I'm sure you
9 can -- which ones, I'm not exactly sure.

10 JUDGE SAINSOT: Right. It's in your --

11 MR. BRADY: Whatever you're going to exclude,
12 specifically identify them and that would be fine.

13 JUDGE SAINSOT: Right. And it's probably in my
14 notes, too. I don't know how I skipped it.

15 Ms. Klyasheff, were there discussions
16 amongst the parties about amending this agreement or
17 having a different agreement?

18 MS. KLYASHEFF: No, none.

19 MR. MULROY: Actually, Mary forgot that there
20 was, in this room. We had long discussions about
21 entering this protective order and the terms of it.
22 I actually thought we had reached agreement, but

1 apparently we haven't. Do you remember that?

2 MS. KLYASHEFF: There were discussions about
3 going forward with the protective order, yes.

4 MR. CLARKE: I recall some discussions about a
5 protective order that we were talking about putting
6 together. We received a proposal from Peoples which
7 we were considering. That process was somewhat
8 truncated when Peoples filed their request. And with
9 regard to how that discussion applies to the
10 protective agreement in effect between the Attorney
11 General and Peoples, that agreement specifically says
12 that changes to the agreement have to be in writing
13 and agreed to by both parties. And we haven't talked
14 about -- specifically about making changes to the
15 protective agreement in effect.

16 And just to clarify the record with
17 regard to the penalty provisions in the current
18 existing protective agreement, the agreement says
19 that the parties agree that violations of the
20 agreement -- unauthorized disclosure of confidential
21 information -- may result in liabilities or damages
22 as provided by law. So that's -- I mean, it's in

1 there.

2 JUDGE SAINSOT: Well, it's better than nothing,
3 but it still doesn't -- how would you measure the
4 damages? It would be very difficult.

5 MR. CLARKE: Well, in the process of
6 negotiating the agreement -- I can't speak for
7 exactly what happened on Peoples' side -- but they
8 determined that it was enough, and they agreed to it.

9 JUDGE SAINSOT: I understand your position,
10 Mr. Clarke. But on the other hand, if I sat around
11 and waited until you all got together and agreed on
12 something, there would be a lot more gray hair on my
13 head.

14 MR. CLARKE: Well, what distinguishes this
15 particular agreement from something else that we're
16 considering or getting ready to agree on, this is a
17 done deal. This was a done deal in October 2002.
18 And it's something that we agreed on.

19 JUDGE SAINSOT: I understand. On the other
20 hand -- again, I don't think it's unreasonable to
21 have -- I mean, what really the penalty clause is,
22 and that's really the only issue, I think, the

1 penalty clause is a liquidated damages provision.

2 MR. CLARKE: Well, I mean, not to rehash and I
3 won't mention it again. But if they wanted a
4 liquidated damages provision, the time to talk about
5 it was when we were negotiating, and that time passed
6 quite a while ago.

7 JUDGE SAINSBOT: I don't disagree that that's a
8 better way for things. But in life sometimes things
9 don't work that way; sometimes they just don't work
10 that way. And I myself have wondered for a long time
11 why people entered into the standard ICC protective
12 agreement because it leaves -- it invariably leaves a
13 certain party unprotected. So I don't know what to
14 say to that other than I think Peoples' counsel has a
15 right to protect their client albeit not -- albeit a
16 little late.

17 All right.

18 MR. BRADY: Your Honor, may I ask a point of
19 clarification or understanding on the protective
20 order?

21 When -- will this -- the protective
22 order last for two years beyond the final order?

1 JUDGE SAINSOT: Right.

2 MR. BRADY: So will the docket remain
3 essentially open for those two years or --

4 JUDGE SAINSOT: No, no.

5 MR. BRADY: -- how does that necessarily come
6 before you when someone else wants a decision? Do
7 they -- so they're not going to bring it within --
8 file it with the Commission under this docket, how
9 does that necessarily --

10 JUDGE SAINSOT: Well, they could ask me to lift
11 the protective order. Typically what will happen is
12 anything -- on the E-docket, it will just state, you
13 know, proprietary, and you can't get it. And then
14 you would have to come before me, if it were in
15 evidence. If it weren't in evidence and you wanted
16 it, I don't know how that would work necessarily or
17 why you would want it if it weren't in evidence.

18 MR. BRADY: I'm just pointing out that fact --

19 JUDGE SAINSOT: Yeah, right.

20 MR. BRADY: -- something that clicked in my
21 head is that this provides protection beyond the
22 two-year period or two years after the final order.

1 I was wondering, what's the mechanism in case someone
2 did want to come in and --

3 MR. WEGING: Once the declaration is made that
4 this stuff is protected by the Commission, it is
5 protected by the Commission, and the only way you
6 could get ahold of it is either try to -- and I've
7 never seen anyone ever try that -- is to seek the
8 Commission to lift the proprietary protection or to
9 send a subpoena here seeking those documents claiming
10 that it's related to a lawsuit of some sort or
11 another.

12 JUDGE SAINSOT: They would have to put it at
13 issue somehow, yeah.

14 MR. WEGING: Right. They would file a
15 subpoena. With this order we will be forced to move
16 to quash that subpoena, which actually is fairly
17 common, and it's where most of these requests come
18 in. And it goes to the circuit court judge to
19 decide. Of course --

20 MR. MULROY: The third way is to just tell us
21 what the subpoena is, and we can agree to make it
22 public.

1 MR. WEGING: Well, you have to understand when
2 these subpoenas come in, I have to hunt for the
3 utility people who were responsible for the
4 documents, whatever they are in Staff's hands, and
5 then talk to their attorney who's handling the case
6 that usually is the defendant or respondent and see
7 if they will -- the company will voluntarily agree
8 for the release of the documents.

9 Rarely, but sometimes, the company
10 will just say, I'll release them, we don't care at
11 this point, because some documents are very
12 proprietary and confidential the first two years of
13 their existence and afterwards they're historical
14 anomalies that no one cares about anymore. But I'm
15 not saying that that's for these documents but -- you
16 know. But, yes, that's how that usually comes about.
17 I've never seen anyone actually ask the Commission to
18 lift a proprietary ruling.

19 I was going to mention one other
20 point. You've talked about liquidated damages in
21 your protective order.

22 JUDGE SAINSOT: Uh-huh.

1 MR. WEGING: But what you've assessed is a fine
2 going to the State of Illinois; that wouldn't go to --

3 JUDGE SAINSOT: Oh, you're absolutely right.
4 Right. I'm looking at it in kind of a two
5 dimensional thing, but you're absolutely right. I
6 mean, because the money doesn't -- you know, to me
7 the money is just there. It wouldn't go to me anyway
8 or -- you know. I mean, of course it wouldn't go to
9 me. But, you know, I'm not drafting something on
10 behalf of a client, you know, and so I'm not really
11 thinking -- it's kind of, you know, water trickling
12 down to me. You know, it doesn't -- but you're
13 right. All right.

14 Mr. Reddick.

15 MR. REDDICK: City of Chicago.

16 There are a couple of points where we
17 would like to be heard. And it may be our fault.
18 Maybe our pleading wasn't sufficiently clear, but I
19 did want the record to be clear.

20 Your first point about consultants and
21 secretaries and something I think is not at all what
22 we had in mind. What we had in mind with the

1 references to intrusions into trial preparation were
2 that we would have to disclose to Peoples and get
3 their concurrence for us to use any particular piece
4 of documentary evidence before we decided to include
5 it in our case, before we included it in our prefiled
6 testimony or used it in evidence. So we would
7 effectively be bringing them into our trial
8 preparation as we were doing it to get clearance to
9 file as part of prefiled testimony certain documents
10 that were provided in discovery.

11 JUDGE SAINCOT: And that was my second point
12 because those are the only two instances that I could --
13 when I was talking about the two instances, one was
14 the experts; the other was that I will put something
15 in the order making it clear that you don't have to
16 go to Peoples to present something at trial. You
17 do -- if it is proprietary or attorney-client, you do
18 have to file it under seal at trial, but you don't
19 have to get clearance from them.

20 MR. REDDICK: And I understand that. And that
21 is the other half of the problem as we tried to
22 explain in our comments because as the protective

1 order was worded when we saw it, once we file
2 something under seal, it is under seal forever in
3 effect. There is no provision in the protective
4 order to change that. In fact it says once filed
5 under seal, it shall remain so.

6 We, to avoid having to go to Peoples
7 in advance, would have to file it under seal in which
8 case it stays under seal forever. So our choices are
9 bring them into our trial preparation or put it
10 forever under seal which may not be appropriate.
11 Neither one of those may be an appropriate result.

12 JUDGE SAINSOT: Well, only attorney-client
13 would remain under seal forever.

14 MR. REDDICK: The other is five years which
15 effectively removes the public from the process.

16 JUDGE SAINSOT: Well, yeah. I'm sorry, but
17 that's the way it goes. Yeah. The public is removed
18 from attorney-client and proprietary information.

19 MR. REDDICK: And --

20 MR. JOLLY: But if we have a disagreement that
21 something is proprietary -- it seems to me that any
22 document we use, they're all marked now as

1 confidential.

2 JUDGE SAINSOT: Uh-huh.

3 MR. JOLLY: It seems to me that any document
4 that we want to use, we're going to have to just
5 bring a whole raft of documents to Peoples for their
6 approval.

7 JUDGE SAINSOT: Why?

8 MR. JOLLY: Why? Because everything -- because
9 your agreement applies to every --

10 MR. REDDICK: Maybe I should ask a clarifying
11 question first because that may not be a problem.
12 Does your protective order as to post-February 2004
13 discovery purport to nullify the agreement we have as
14 to post 2004 -- post-February 2004 discovery?

15 JUDGE SAINSOT: You mean -- could you say that
16 again? I'm not quite sure I understood.

17 MR. REDDICK: Do we still have to follow the
18 protective agreement that gives weight to this
19 confidential designation in light of your order?

20 JUDGE SAINSOT: Oh, so that's why you were
21 going on about the confidential.

22 MR. JOLLY: Yes.

1 JUDGE SAINSOT: Right. Oh. Well, I don't know
2 what to say to that except for you can call something --
3 I mean, as far as I'm concerned, you can call
4 something anything you want. That doesn't mean I'm
5 going to think it's confidential.

6 MS. SODERNA: Right, but everything is marked
7 right now --

8 JUDGE SAINSOT: Right.

9 MS. SODERNA: -- and we can't make that
10 determination.

11 MR. JOLLY: To avoid penalties or the fear of
12 incurring penalties, we may decide that to be safe,
13 we're going to have to clear every document with
14 Peoples before we can refer to it as a public
15 document.

16 JUDGE SAINSOT: Why? Because it's designated
17 as confidential?

18 MR. JOLLY: As confidential.

19 MS. SODERNA: Right.

20 MR. REDDICK: It appears that your order adopts
21 the same sort of inclusive approach that Peoples did
22 with their designations because everything is

1 presumptively protected unless we first clear it with
2 Peoples or clear it with you. That's the way the
3 order reads.

4 JUDGE SAINSOT: Well, would you like to go
5 through those 45 boxes? How else do you propose that
6 we do this?

7 MR. REDDICK: We have, pursuant to the
8 provisions of the protective agreement we have with
9 Peoples, undertaken the process that agreement
10 defines. We have been through the documents. We've
11 told Peoples that we didn't find any with the
12 possible exception of the GPAA that was still
13 confidential after all this time has passed given the
14 nature of the document. And they have not responded
15 as to any particular documents that they disagreed
16 with us on.

17 JUDGE SAINSOT: So you're saying to me there's
18 only one agreement and that's the GPAA?

19 MR. REDDICK: The GPAA is still in effect, it
20 is still being performed by Peoples Gas, and it is
21 with entities that are still in operation. Most of
22 the materials we have relate to firms that are no

1 longer in business, no longer operating, relate to
2 market transactions from three, four years ago or are
3 agreements that are no longer in effect.

4 JUDGE SAINSOT: Well, I don't know what to say
5 to that. Just because -- you know, that gets back to
6 proprietary and my definition of proprietary matters
7 in this case I think as opposed to yours. I
8 understand that the particular arrangement may be
9 obsolete, but that doesn't mean that what is on an
10 arrangement may not be proprietary in terms of how
11 Peoples buys gas or how PESCO buys gas or whatever.
12 Do you understand what I'm saying?

13 MR. REDDICK: I do, but that's why we
14 referenced in our comments that Peoples has already
15 filed testimony that says they've changed their --

16 JUDGE SAINSOT: Well, but that doesn't
17 necessarily mean that all of that information is not
18 valid.

19 MR. REDDICK: Precisely so. And the only
20 People who can make that determination have declined
21 to do so so far. We don't think it is, but they
22 haven't told us why it is.

1 JUDGE SAINCOT: Well, so should I segregate all
2 my Fridays for the next few months so we can just
3 come in and have rulings on a regular basis on this
4 issue or...

5 MR. REDDICK: No. I think we are at a point
6 now where broad inclusive orders and agreements are
7 not appropriate. You have criticized the usual
8 process of the Commission, but I find that there are
9 some reasons for it. The nature of these proceedings
10 here at the Commission are very paper intensive, and
11 they involve an extreme amount of detailed
12 information because these are public utilities,
13 monopoly enterprises regulated by the State, and that
14 level of detailed investigation goes on all the time.

15 In the course of those proceedings, we
16 have a need to get the information as quickly as
17 possible. The fact that we entered into those
18 agreements when we did some two years ago allows us
19 to get the information as quickly as possible without
20 having to go through review. It is not because we
21 thought that they had proprietary information or
22 privileged and confidential information.

1 JUDGE SAINCOT: I understand. You just wanted
2 the information. Right.

3 MR. REDDICK: We just wanted the information.
4 So having done that, we're now at a point, trial
5 preparation, where we need to sort through what is
6 and what isn't so we know what to file and what not
7 to file.

8 And, as I say, the way the protective
9 order reads, we're presented with two not very
10 attractive alternatives, neither of which may be the
11 appropriate result for a particular document. We
12 either show it to Peoples before we use it, or we
13 file it under seal and we remove the public from the
14 process as to that particular kind of information.

15 And we tend to approach these cases a
16 little differently from civil litigation in the
17 circuit court. We're not two ships passing in the
18 night who had a spat and come to court for
19 resolution. This is a continuing process of
20 regulation of a public utility monopoly, and most of
21 the parties in this case are representatives of the
22 public in some way or another. Notwithstanding that,

1 the public at large does have, under the Public
2 Utilities Act, a right to participate in these
3 proceedings.

4 JUDGE SAINSOT: But I don't think we're --
5 we're talking about such a small amount of documents,
6 and I don't think we're barring the public.

7 MR. REDDICK: I wish that were true, but we
8 can't find that out. We can't determine that.

9 JUDGE SAINSOT: Well, I think the way to
10 resolve that is to have a designation -- have a short
11 hearing before the trial itself on what's
12 confidential and what's not on the date of trial.

13 MR. REDDICK: That's after we have filed
14 testimony under seal.

15 MR. JOLLY: Right. We prefer not to file
16 anything under seal.

17 MS. KLYASHEFF: Testimony doesn't --

18 MR. REDDICK: We've tried to make all of our --
19 we've drafted testimony --

20 JUDGE SAINSOT: Don't file any. Don't file it.

21 MR. JOLLY: That may not be the solution.

22 MR. CLARKE: We still have to prepare it and

1 base our theory of the case on certain documents.
2 And if we have a short hearing the day before trial,
3 that's somewhat late in the process to learn that the
4 documents that the theory we based our case on need
5 to be substantially revised because something that we
6 thought was not confidential is or vice versa.

7 JUDGE SAINSOT: I don't think it needs to be
8 revised. All it would -- I don't think anything
9 would need to be changed. All it would be would be
10 whether it was filed under seal or not when it went
11 in the court record. That's all.

12 MS. SODERNA: But that prevents us from talking
13 about --

14 A VOICE: This is the Springfield office. If
15 there's any way the parties could speak up or the
16 speaker phone could be turned up, we're having a hard
17 time hearing.

18 MS. SODERNA: But that procedure prevents the
19 parties who are filing testimony with documents that
20 may or may not be confidential from discussing any of
21 it in a public manner.

22 JUDGE SAINSOT: Right.

1 MR. MULROY: Right.

2 MS. SODERNA: Right. And then we have a
3 problem with that if that prevents us from discussing
4 our case in a public way. I mean, prefiled testimony
5 is generally publicized.

6 JUDGE SAINSOT: Oh, that's not -- I strongly
7 disagree with that. It is customary at the ICC to
8 keep gobs of paper under seal, and typically nobody
9 objects. There is no reason why you would have to go
10 public with anything that was attorney-client or
11 truly proprietary. No reason.

12 MS. SODERNA: But we can't know --

13 MR. REDDICK: We can't make that determination
14 ahead of time.

15 JUDGE SAINSOT: Well, if you want to, you can
16 always bring a motion in front of me.

17 MR. REDDICK: That's the final point in our
18 motion which is that reverses the burden of going
19 forward and the procedural burdens that usually
20 attach. We're in a public proceeding in a public
21 forum, and usually the party seeking the protection
22 from the public is the one that has to carry that

1 burden.

2 Here we have thousands of documents,
3 and it's been flipped. If you think something
4 deserves to be published, pick it out, bring it in,
5 show us why. That's what we're facing.

6 MR. MULROY: Now, I don't think that's what the
7 order says. I think the order puts the burden of
8 proof or the burden of going forward on Peoples to
9 show why it should not be made public. I don't think
10 it puts the burden on you to show why it should be
11 made public.

12 My understanding of this procedure is
13 that if you identify documents -- and this is hardly
14 trial by ambush. I mean, these are all our
15 documents. If you come up with 500 documents that
16 you want to use, you give us the Bates numbers, we
17 look at the Bates numbers and tell you they're either
18 confidential or they're not. If we tell you they're
19 not confidential, you use them. If we say two or
20 three are, you disagree with that, we have to come
21 before the Judge and prove why they're confidential.
22 That was my understanding.

1 JUDGE SAINSOT: Right. Peoples has the burden
2 of proof.

3 MR. REDDICK: Mr. Mulroy, we've already done
4 that, and you've not responded.

5 MR. MULROY: Now, that's interesting that you
6 would say that. You did write a letter and you said
7 as far as you were concerned, nothing that we've
8 stamped confidential is confidential, so we should go
9 through all the documents --

10 MR. REDDICK: With the exception of --

11 MR. MULROY: -- just the way we're objecting
12 to. And the way you do this is you prepare your case
13 and show us not 50,000 documents, but show us the
14 20,000 that you want to use.

15 I mean, the burden of going forward
16 here is why we gave you all these papers so you could
17 look at everything we had, pick out the ones you want
18 to use, and then those are the ones we should be
19 discussing, not make us go back and spend another
20 two months going through every single one of these
21 papers and segregating attorney-client privilege.
22 We're trying to move this thing along. That's why we

1 did it this way.

2 MR. REDDICK: I thought you had segregated
3 attorney-client privilege and had a log of those.
4 You didn't give us any of those.

5 MR. MULROY: You didn't ask for any of those.

6 MR. REDDICK: Am I right?

7 MR. MULROY: You didn't ask for any of those.

8 MR. REDDICK: Am I right?

9 MR. MULROY: You didn't ask for any
10 attorney-client privilege. You got the log; am I
11 right?

12 MR. REDDICK: Okay.

13 MR. MULROY: You got the log; am I right?

14 MR. REDDICK: There are no attorney-client
15 privilege --

16 MR. MULROY: You got the log, though, right?

17 MR. JOLLY: We got access to the log.

18 MR. MULROY: You have -- okay. You have --

19 MR. REDDICK: There are no attorney-client
20 privileged documents in what we've got. We are only
21 talking about proprietary, and we have no qualms
22 whatever about protecting attorney-client privileged

1 documents. The disagreement here is over what is
2 proprietary and the nature of that information
3 particularly given how far we are into this process
4 and how old the quantitative data are.

5 We have reviewed the information and
6 made, in our opinion, a good faith determination that
7 it doesn't warrant protection because it relates to
8 businesses that are no longer operating, things that
9 are so old that they are no longer sensitive to the
10 market.

11 And we've sent to Mr. Mulroy a letter
12 saying we looked at it again, and here's what we came
13 up with, possible exception being the GPAA because
14 it's still in effect and it's actually reflective of
15 what you're doing; as to the rest, we don't think so.
16 They've declined to respond.

17 JUDGE SAINSBOT: I guess that will be a good
18 segue into the next portion of my order. I have to
19 say this, that when you all are in a situation where
20 after the record has been re-opened -- after the
21 discovery has been re-opened rather, 45 boxes of
22 documents were tendered and that's still not enough,

1 the people who made the discovery requests that
2 resulted in 45 boxes of documents being tendered are
3 the ones who put themselves in that position. And I
4 will say no more. That's the end of that.

5 MR. REDDICK: The only qualification that I beg
6 to offer for the record --

7 JUDGE SAINSOT: Lawyers, you just can't keep
8 them quiet. Okay.

9 MR. REDDICK: -- is that we anticipated a good
10 faith determination of what's confidential and what's
11 not, and we got everything Bates stamped --

12 THE REPORTER: I'm sorry. I can't hear you.

13 MR. REDDICK: We had a good faith expectation
14 that things would be determined to be confidential
15 before they were stamped confidential. We got every
16 single page stamped confidential. A burden that you
17 described is legitimate and we accept that. Had we
18 gotten a reasonable number of documents that had been
19 determined to be and were stamped confidential, we
20 could live with that.

21 JUDGE SAINSOT: I understand. And I understand
22 that not every document that's stamped

1 confidential -- at least of the new 45 boxes -- is
2 confidential. All I'm trying to do is move this case
3 along. I am not trying to impose an onus on you. I
4 am willing to stop everything and try and resolve
5 issues that come up -- I'm sure I'll regret those
6 words.

7 But what I am trying to do is have a
8 situation where you can quickly get things resolved
9 by just E-mailing counsel over here, telling them,
10 you know, I'm going to put this in the Business
11 Review or whatever. Because frankly, the other part
12 of it is, you shouldn't be publishing a lot of
13 documents really at this point for a number of
14 reasons: One, you should be preparing for trial and
15 you should be too busy with other things; and, two,
16 except for your right to the press, which I don't --
17 which is fine, you shouldn't be -- there should be no
18 other reason to publish these documents to third
19 parties except for maybe publicity about what you're
20 doing.

21 MR. REDDICK: And we accept that, your Honor,
22 and we have not published anything. There has been

1 no suggestion that anyone has violated any of the
2 confidentiality agreements here.

3 JUDGE SAINSOT: Right.

4 MR. REDDICK: But we are public agencies, and
5 we don't like to file secret testimony.

6 JUDGE SAINSOT: Right. I don't disagree with
7 you on that personally so feel free to bring up
8 something if it comes up. But, you know, I can tell
9 you it's a real pain in the neck for me too to have
10 to designate what's confidential and what's not, and
11 I don't necessarily enjoy it. However, I think this
12 is the fastest way to get this case moving.

13 MR. REDDICK: In that vein, in an effort to do
14 so I still need clarification on whether or not the
15 protective order supersedes or nullifies the
16 protective agreement as to post-February 2004.

17 JUDGE SAINSOT: Because of the designation of
18 confidential?

19 MR. REDDICK: Because we are still -- we're not
20 going to be able to move as adroitly as you would
21 like.

22 JUDGE SAINSOT: Because -- okay. Run this by

1 me again. The previous confidentiality agreement
2 provided a procedure that was triggered by the
3 designation of --

4 MR. REDDICK: Yes. I can describe the
5 procedure for you.

6 JUDGE SAINSOT: It's a procedure that's
7 somewhat akin to the procedure that I have in that,
8 you know, Peoples has the burden of proof. I'm the
9 one who makes the call.

10 MR. REDDICK: Yes.

11 JUDGE SAINSOT: I get all the fun jobs.

12 MR. REDDICK: But as to a determination of that
13 sort, we are obligated to treat as confidential all
14 45 boxes including blank pages.

15 JUDGE SAINSOT: Right. Okay. For the record,
16 am I correct that all 45 boxes are designated
17 confidential?

18 MR. MULROY: Uh-huh.

19 JUDGE SAINSOT: Okay. So I can clearly and
20 unequivocally say that not all 45 boxes of documents
21 are truly confidential; is that correct?

22 MR. MULROY: You mean not every page?

1 JUDGE SAINSOT: Right.

2 MR. MULROY: That's correct.

3 JUDGE SAINSOT: Right. Okay. So there's your
4 answer. You do not have to treat all of the
5 documents that were tendered after February 10, 2004,
6 as truly confidential. You will have to go through
7 that procedure, my procedure. Okay.

8 So are we done on this issue?

9 MR. REDDICK: With one final clarification.
10 You had mentioned that there was a strong financial
11 incentive to Peoples to make accurate determinations
12 as to proprietary disclosure.

13 JUDGE SAINSOT: Uh-huh.

14 MR. REDDICK: I didn't see that in the
15 protective order.

16 JUDGE SAINSOT: The order has a thousand dollar
17 fine for anybody who violates it, including Peoples.

18 MS. DALE: Who violates it?

19 MR. REDDICK: The violation would only be
20 disclosure.

21 JUDGE SAINSOT: Well, I'm going to change that
22 then if that's what it says.

1 MS. DALE: About not making a good faith
2 determination on the proprietary nature of documents.

3 JUDGE SAINSOT: You mean if Peoples -- hold on
4 a second. I'm having a walking and chewing gum
5 problem here.

6 All right. So Peoples -- let me just
7 run this -- think out loud. If Peoples made a bad
8 faith determination that something was proprietary,
9 is that your point?

10 MS. DALE: Well, certainly a blank page, I
11 don't think that's a good faith determination;
12 something that's already been released to the public,
13 a newspaper article, that's --

14 JUDGE SAINSOT: Then you would just bring it
15 before me.

16 MR. MULROY: Then we would just say it's not
17 confidential. I don't see what the trick is here.
18 I've never spent so much time on a protective order.
19 It makes me very nervous that somebody wants to
20 publish this stuff. The whole idea here was for them
21 to get the documents quickly.

22 If they thought a blank page was not

1 confidential, they should give me the Bates number,
2 and I would say the blank page is not confidential.
3 It would take me that long, same with a newspaper
4 article, anything they want to use.

5 If they don't want to disclose it to
6 us because they want to hide the ball in their
7 testimony, then they file it under seal and you can
8 rule on it later. I'm finding great difficulty in
9 what the problem is here. I thought we were helping,
10 not hurting.

11 MR. CLARKE: The specific problem that -- I
12 think we were almost done and we were just talking
13 about how to make sure the penalties applied to
14 everyone which is a little bit of a different tack,
15 and we were trying to figure out what could possibly
16 cause a penalty -- what could possibly cause Peoples
17 to incur a penalty.

18 MR. MULROY: We're not writing a statute; we're
19 doing a protective order. The protective order means
20 the documents filed here are protected. That's the
21 point of it.

22 JUDGE SAINSBOT: Okay. I think that you're

1 sufficiently protected in that you would just bring
2 it before me if Peoples made a bad faith
3 determination. I don't think I need to penalize
4 them. We're all lawyers here. And, you know, there
5 is -- most lawyers would be ashamed of asserting that
6 a piece of paper is privileged, a piece of blank
7 paper, so I think that's enough.

8 MR. CLARKE: I'm sorry. I think it's enough
9 also. But you don't think you need to penalize them --
10 and I agree -- but we don't think you need to
11 penalize us.

12 JUDGE SAINSOT: Well --

13 MR. CLARKE: If we are penalized --

14 JUDGE SAINSOT: Now, Mr. Clarke, we've had this
15 discussion. We've had this discussion. I understand
16 that you don't think you need to be penalized and I'm
17 sure you don't. I'm not going to address this
18 further. But the fact is that there's no point in
19 having an agreement without some kind of penalty.
20 There's just not.

21 Okay. We're moving on from the
22 protective order. And, yes, Mr. Mulroy, this is the

1 longest in my life I have contemplated protective
2 orders.

3 Okay. I'm starting with Peoples'
4 objections to Staff data requests. You want to take
5 a five-minute break? Are you okay? You're fine.

6 The one with Aruba, is that 16.1?
7 Which one is that?

8 MR. BRADY: There's a series of questions that
9 relate to Aruba. It's 16.1 through, I believe,
10 through 16.12.

11 JUDGE SAINSOT: Okay. Okay. I'm just a little
12 confused. Okay.

13 So, for the record, I am addressing
14 16.1 through 16.5 and 16.7 through 16.12, and these
15 are all POL data requests.

16 Peoples objects to the broad
17 definition of Aruba which is the subject of all of
18 these data requests. I agree that it's broad, and
19 this is the only time I'm going to do this. Staff
20 should be able, however, to provide Peoples with a
21 definition that's workable for both parties. And,
22 Staff, I'll need, at the end of the hearing, some

1 indication of how long it will take you to get that
2 definition to Peoples.

3 MR. BRADY: I'm sorry? A definition for Aruba?

4 JUDGE SAINSOT: Yes.

5 MR. BRADY: I guess that -- I guess the
6 difficulty in that -- we can, I guess, provide a
7 statement of what we understand -- our questions
8 are -- our data request questions were asking them,
9 since their company -- this was a term that was used
10 between their company and Enron, to explain what that
11 term was, and since we don't understand the exact --

12 JUDGE SAINSOT: Well, you can start from the
13 negative then. For example, vacation plans of
14 Peoples' employees might be a good thing to exclude.
15 Under your current definition, anybody who is going
16 to the ABC Islands and making a trip would fall
17 within that definition.

18 MR. BRADY: No. I contradict -- our preamble
19 to these questions specifically limited it to as it
20 was used in response -- or used in reference to an
21 agreement dated September 16, 1999. So unless
22 somehow a reference to a trip to Aruba in relation to

1 an agreement --

2 JUDGE SAINSOT: All right. All right. Your
3 point is well taken. Okay. So on that basis then,
4 I've changed my mind. Peoples can answer that.

5 MR. MULROY: When should we talk to you about
6 our electronic response to these questions as opposed
7 to a documentary response because Project Aruba would
8 pick up electronically trips to Aruba? Paperwise --

9 JUDGE SAINSOT: No. That's true. Right.

10 MR. MULROY: Now, we are in the process of
11 negotiating this electronic document search. And
12 would it be convenient for you to make your ruling
13 today as though this was just paper discovery because
14 we're going to present the electronic discovery issue
15 to you later?

16 MR. BRADY: You're saying you and you're
17 looking at me. Are you saying you, the ALJ, or you,
18 me?

19 MR. MULROY: I'm talking to her. I'm talking
20 to the Judge.

21 MR. BRADY: Okay.

22 MR. MULROY: But I'm hoping you're hearing what

1 I'm saying because we've had long conversations about
2 the electronic discovery. And I think maybe two
3 separate rulings may be required from you, one if
4 it's electronically requested and one if it's
5 requested in a paper form for the reason I just
6 described.

7 JUDGE SAINSOT: Yeah. I assumed, I guess, that
8 it was both or in my head it was -- I wasn't really
9 clear, but then later on you have specific electronic
10 document issues.

11 MR. MULROY: Right. Like EMW is a great -- you
12 know. Should we search for EMW? Well, you can get
13 Ernie M. Wilson or you can get Enron Midwest. If
14 you're doing it in paper, you get Enron Midwest. If
15 you're doing it electronically, you get all kinds of
16 stuff.

17 MR. WEGING: Stepping in here, I think the
18 electronic stuff really could not be talked about
19 yet. I mean, we've had this rather long --

20 MR. MULROY: Good. You're agreeing with me.
21 Just say yes.

22 MR. WEGING: We asked for a bunch of documents

1 in 16.54 and related data requests. The company came
2 back with, Here's the stuff we've done for the
3 Attorney General in another proceeding. We came back
4 with -- but there's additional terms we want to
5 search, and that's where we've been. And I agree
6 there's certain problems.

7 We had ITS in there at one point --

8 JUDGE SAINSOT: Oh, my goodness.

9 MR. WEGING: -- and we kept telling Staff that
10 we don't want every document that has the word "its"
11 in it and no one would come up with -- you know.

12 JUDGE SAINSOT: Right.

13 MR. WEGING: That's a peculiarity of electronic
14 searching, that it does -- you have to watch that
15 kind of thing. I don't think the electronic stuff is
16 right. We could talk about the paper now because --

17 MR. BRADY: Yeah.

18 JUDGE SAINSOT: So I'll reserve the electronic
19 stuff. Stop me if I get over.

20 Okay. So on that basis, I think that
21 Peoples can answer that. And at the end of the
22 hearing, I want to know how long it's going to take

1 you to answer whatever you need to answer. Okay.

2 The next Staff thing is Staff Data
3 Request 16.37. It is documents signed in conjunction
4 with the gas purchase agreement. I'm of the opinion
5 that this request is sufficiently specific and
6 Peoples must answer it.

7 The next documents are Staff Data
8 Requests 16.47 through 16.51. These requests are
9 specific and Peoples must answer them if they know
10 the answers. It looked to me like your real
11 objection was that you didn't know the answer so. . .

12 Staff Data Requests 16.52 and 16.53,
13 Peoples says these requests are overbroad and they
14 concern all incentive compensation packages or plans
15 or whatever the term is regarding all Peoples
16 executives and all Peoples related companies, 1996
17 through the present. This is overbroad. Peoples
18 does not have to tender anything further pursuant to
19 these data requests.

20 16.54 concerns contracts, memoranda
21 and documentation regarding business relationships,
22 any business relationship between Peoples, an

1 affiliate and Enron or an Enron affiliate between
2 1996 to the present. This is overbroad and it
3 duplicates somewhat what's already asked in 16.57.
4 Peoples does not have to answer it.

5 16.55, Staff has represented that you
6 are working this issue out, 16.55 and 16.56. Is this
7 news to you, Ms. Klyasheff?

8 MS. KLYASHEFF: I just need to see the
9 question.

10 MR. MULROY: I do too. What's the question?
11 We got it.

12 MS. KLYASHEFF: Yes. This has been worked out,
13 I believe. And we will forward responses,
14 supplemental responses.

15 JUDGE SAINSOT: Okay. 55 and 56? Okay.

16 MR. MULROY: Yes.

17 JUDGE SAINSOT: So I don't need to rule on
18 those.

19 MR. MULROY: No.

20 JUDGE SAINSOT: Okay. 16.57, all contracts
21 with Enron relating to the creation of an affiliate.
22 It's not overbroad. Peoples must answer this.

1 16.58, entities that are listed in
2 16.57 and state whether they're still in existence
3 and the officers of each entity. It's not overbroad.
4 Peoples must answer it.

5 MR. BRADY: May I ask, your Honor, Paragraphs 5
6 and 6 where it talks about 16.52, 53 and 54, I guess
7 I wanted to get clarified was it the language that
8 you're finding overbroad or the time period that
9 you're finding overbroad? It's unclear to me from
10 what you --

11 JUDGE SAINSBOT: A number of things. The
12 incentive compensation plans for all of the -- I
13 mean, first of all, I think it's a stretch to even
14 include the incentive compensation plan. Maybe you
15 can tie it in; maybe you can't.

16 But, I mean, I understand that your
17 theory may be that the Peoples affiliates were
18 affiliated with Enron and that that affected Peoples
19 Gas, Light and Coke Company over here. I understand
20 that.

21 But the incentive compensation plan is
22 a stretch to begin with. And then to ask all of the

1 incentive compensation plans regarding all of -- any
2 Peoples affiliates from 1996 through 2004 is broad.
3 So there's just a lot of "alls" in there about
4 something that I think is marginal at best.

5 MR. BRADY: So the fact that it incorporates
6 affiliates that -- okay.

7 JUDGE SAINSOT: And the fact that it's, you
8 know -- incentive compensation plans really are not
9 too relevant usually to begin with. Maybe you could
10 tie that up again. I don't want to get into it
11 but --

12 MR. BRADY: Okay.

13 JUDGE SAINSOT: -- it seems peripheral at best.

14 MS. DOSS: Your Honor, I just have a question.
15 I was also questioning 55. Do you -- by your ruling,
16 do you mean that the question cannot be reworded and
17 asked in a different way or you're just saying as
18 currently written.

19 JUDGE SAINSOT: I'm not barring you from asking
20 it a different way, but discovery is going to close
21 pretty soon. So you would have to work that out and
22 see what counsel for Peoples can do.

1 Okay. CUB data requests. These are
2 Peoples' objections to CUB data requests still.

3 13.2, if you know, counsel, does this
4 ask for all documents relating to the company's and
5 any other person's plans for gas transactions?

6 MS. SODERNA: What was that?

7 JUDGE SAINSOT: 13.2, does it ask for all
8 documents -- I couldn't really tell by what
9 Ms. Klyasheff said for sure -- I'm a little confused
10 about what that is really asking for.

11 MS. SODERNA: Do you want to look at it?

12 JUDGE SAINSOT: If you have it, yeah.

13 MS. SODERNA: Yeah. It just might be easier
14 for you to read it.

15 JUDGE SAINSOT: How was any other person
16 defined in these things?

17 MS. SODERNA: I'll give you definitions.

18 Person includes the company and means any natural
19 person, corporate entity, partnership, association,
20 joint venture, government entity or trust.

21 JUDGE SAINSOT: Okay. Peoples doesn't have to
22 answer that one. That's way too vague.

1 13.3 through 13.9, I don't have a copy
2 of these data requests. Nobody gave them to me, so I
3 can't rule on them.

4 13.27, all documents relating to a
5 business relationship between the gas purchase
6 agreement with Enron and Ennovate. This is not too
7 vague. Peoples has to answer it.

8 13.28, all documents relating to an
9 internal audit of Ennovate. This is not overbroad.
10 Peoples has to answer it.

11 13.29, all documents relating to Aruba
12 or Project Aruba. Since Staff's already -- I've
13 already ruled on Staff's thing, I would suggest that
14 you just get whatever Staff gets.

15 MS. SODERNA: That's 13.29?

16 JUDGE SAINSOT: Right.

17 MS. SODERNA: Okay.

18 JUDGE SAINSOT: 13.31, documents relating to
19 the effects of Enron's bankruptcy on Peoples. This
20 is irrelevant. Peoples does not have to answer it.

21 15.1 through 15.5, general ledgers of
22 Peoples, 1998 through 2003, and its affiliate. Too

1 broad. Peoples doesn't have to tender anything
2 further.

3 Okay. And then the electronic data
4 searches we're going to talk about later on, right?

5 MR. MULROY: Yes.

6 JUDGE SAINSOT: So I'm going to skip over that
7 now.

8 Okay. Moving on. CUB's discovery
9 disputes. CUB did not give me any of its discovery
10 requests, so I can't tell if they're vague. And CUB
11 did not really give me any specific answer, so I
12 can't rule on CUB's discovery requests.

13 Staff's outstanding discovery. For
14 the record, I already ruled on 16.2, 16.37, 16.42,
15 16.52, 16.54, 16.55, 16.56, 16.57; therefore, I will
16 not mention them now.

17 MR. WEGING: Your Honor, 16.42, I didn't -- you
18 said 16.42 you ruled on?

19 JUDGE SAINSOT: 43.

20 MR. WEGING: Yeah. But I think you went from
21 16.37 to 16.47 before.

22 JUDGE SAINSOT: Okay. Did I miss --

1 MR. WEGING: Yeah, I mean, 47 to 51 you ruled
2 were specific, 37 because it was in conjunction with
3 the GPA, but I didn't remember any ruling between any
4 of the questions between 37 and 47.

5 JUDGE SAINSOT: All right. Let me just see.
6 37 and 47. See, this is why Heather is here too
7 because I knew this would be confusing. I did
8 rule 16.47 to 51.

9 MR. WEGING: Yes.

10 JUDGE SAINSOT: And I did rule on 16.37. Does
11 that answer your question?

12 MR. WEGING: Well, you said you weren't going
13 back to 42, but you hadn't ruled on 42. Then you
14 told me it was 43.

15 MR. BRADY: You want to just repeat your list
16 of what you're not going to review again?

17 JUDGE SAINSOT: Right. 16.2 -- maybe I just
18 said it wrong -- 16.37, 16.43, 16.52, 16.54, 16.55,
19 16.56 and 16.57.

20 MR. BRADY: Right. And you read off 16. --
21 16.43, and that hasn't been addressed yet. We did
22 16.37 and then jumped to 16.47 to 16.51.

1 JUDGE SAINSOT: All right. So I may have to
2 look at 16.43. I tell you what. After I get done
3 with this, I'll take a break and take a look at it.
4 Okay. 16.17, Ennovate compliance
5 reports. It's not overbroad. Peoples must answer.
6 16.17, audit reports regarding
7 Ennovate is not overbroad. Peoples must answer it.
8 16.20 duplicates 16.17 for the most
9 part. Peoples does not have to answer it.
10 16.21, correspondence regarding
11 Ennovate audit. Peoples does not have to answer
12 this.
13 16.23, definitions in Peoples Energy
14 resource correspondence regarding Ennovate. Peoples
15 does not have to answer this further.
16 16.24, agreements between Peoples and
17 Peoples Energy memorializing the relationship amongst
18 the parties. Peoples must answer this regarding
19 Peoples Gas, Light and Coke Company. It doesn't have
20 to answer it regarding Peoples Energy Corporation.
21 16.38 is not overbroad. Peoples must
22 answer it.

1 16.43, Peoples has already answered
2 this sufficiently. The agreements with Enron should
3 be obvious even if they are a needle in a haystack as
4 you phrased it.

5 16.52, executive compensation and
6 bonus plans for all affiliates and Peoples'
7 executives, 1996 to the present. This is overbroad.

8 So I'm missing 16.42, right?

9 MR. BRADY: You just ruled on 16.43.

10 JUDGE SAINSOT: 43. Okay. So we're okay with
11 that.

12 All right. I'm going to take a
13 five-minute break, and then we'll talk about the
14 electronic documents.

15 (Whereupon, a recess was taken.)

16 JUDGE SAINSOT: Talking about the electronic
17 documents and how long it will take Peoples to tender
18 the written documents. Why don't we start with that.

19 How long until you think you can get
20 that in order?

21 MS. KLYASHEFF: Supplementing our responses
22 where you directed us to give further answers,

1 two weeks.

2 JUDGE SAINSOT: Okay. So two weeks -- I didn't
3 bring my calendar. Two weeks from today is sometime
4 in August, isn't it?

5 MR. MULROY: Summer is gone.

6 JUDGE SAINSOT: Somebody have a calendar?

7 MR. BRADY: Two weeks from when? Today?

8 JUDGE SAINSOT: Today.

9 MR. BRADY: August 4th.

10 JUDGE SAINSOT: Why don't we make it
11 August 5th. Okay.

12 So, for the record, Peoples shall
13 submit the responses that I have previously indicated
14 are necessary on or before August 5th to the
15 respective parties.

16 Okay. The electronic requests.
17 Mr. Mulroy, maybe you want to --

18 MR. MULROY: In addition to all the papers that
19 we've turned over and you've just ordered us to
20 supplement, we've been asked to search all our
21 electronic files, both active and deleted files, to
22 comply with this request.

1 And listen carefully because I want to
2 make sure, Sean, that I'm getting this chronology
3 right, but I think that we sent a proposal to all the
4 intervenors and to Staff with a list of names of
5 people that we would search Peoples computers and a
6 list of words that we would search as well. The
7 intervenors and Staff wanted us to search more words
8 and more people than we have.

9 What we did was, however, we turned
10 over to the Staff all of our electronic searching
11 based on words we selected -- and many of them were
12 the same that Staff and intervenors had -- and the
13 individuals that they asked us to search. We gave
14 that to Staff and now we're going to give it to
15 intervenors because the protective order has been
16 issued.

17 Then we went back and we searched
18 additional individuals' computers that Staff wanted
19 us to search. So as of this moment, we have searched
20 all the individuals' computers -- and you intervenors
21 have to check me on this -- that you wanted us to
22 search and I know that Staff wanted us to search.

1 The only dispute we have left now is there's a
2 difference of 30 words. They want us to search
3 30 words that we haven't already searched. Let's say
4 we've searched 30 already -- I forget -- they want us
5 to search 30 more.

6 We would like to present to you kind
7 of a summary of what I said so that you can make a
8 ruling on whether we need to go further because
9 there's a huge expense and a huge time period
10 attendant.

11 Did I say that mostly right?

12 MR. BRADY: Yeah, you did. Most of that is
13 correct. There is that outstanding issue. I thought
14 there was still -- putting it before you would be
15 pending -- there's one last avenue of discussion I
16 believe that's still out there being discussed, so
17 I'm not sure if it's actually -- if it's something
18 that's going to be coming to her as of yet as much
19 as --

20 JUDGE SAINSOT: Her being the ALJ?

21 MR. BRADY: I'm sorry.

22 JUDGE SAINSOT: Right.

1 MR. BRADY: Yes, to the Judge, unless you're
2 actually stating now that -- okay. So, yeah,
3 primarily, yes, the production as he stated it is
4 correct as far as Staff has received the documents
5 although we are also -- which impacts our time
6 schedule in this proceeding -- having problems with
7 using the material and getting them loaded. And so
8 we have had discussions in trying to arrange a point
9 for our IT people to meet with their IT people to get
10 that resolved.

11 MR. MULROY: The amount of material is what,
12 185, did I tell you, gigabytes; is that what I said?
13 Do you remember?

14 MR. BRADY: I believe it was 175 or something
15 like that.

16 MR. MULROY: It's a massive amount of material.
17 And they're having trouble opening it, but we didn't.
18 So we have to get our IT people on it. They're on
19 DVDs. It's a lot of stuff. But you see it would
20 naturally be a lot more because it's going to hit a
21 lot more things. As I said, when you put Enron, you
22 get all kinds of things that are duplicates, for

1 instance, news stories.

2 MR. BRADY: Now, I don't know about -- the only
3 thing that I'm not sure about is the terms. Staff in
4 response to Peoples proposal -- Peoples had given us
5 a proposal on May 21st or May 27th. We responded on
6 June 21st expanding their list of people they wanted
7 to search and terms that they wanted to search. I'm
8 not sure how our terms match up with any requests and
9 so forth that the intervenors have, so I don't
10 know -- I don't want to address that. I think that
11 might be a separate matter.

12 MR. MULROY: They're similar. I think they
13 have a few different ones, but they're very close.

14 JUDGE SAINSOT: Mr. Jolly.

15 MR. JOLLY: I would just like to indicate for
16 the record that the City anyway has not been involved
17 and was not involved in these discussions as to how
18 Peoples Gas intended on conducting their electronic
19 search or what terms or phrases they would use. And
20 we can go further back and explain the chronology to
21 you.

22 MR. MULROY: No. If I said that, I didn't mean

1 to say that. You weren't.

2 MR. JOLLY: Okay. I guess we object to that.

3 And ten days before the May 27th letter that

4 Mr. Mulroy sent to us, I sent a letter to

5 Ms. Klyasheff on behalf of the City and CUB

6 indicating it had come to our attention that they had

7 been in discussions with Staff as to the terms --

8 search terms they would use and the employees whose

9 files they would search, and I objected that we were

10 not included in these discussions and that we

11 wouldn't be bound by any agreement that they reached

12 with Staff as to how they would conduct the search.

13 Also in that letter appended with

14 additional search terms -- well, just for a little

15 backup, initially there were search terms and

16 employee names that were included in Staff Data

17 Requests POL 16.59, and we agreed initially to limit

18 our search terms and employee names to those that

19 were included in the Staff request. But we told

20 Peoples that we were likely to expand that and we

21 will provide them that information. In the May 17th

22 letter I appended -- I included an appendix that

1 included the additional employee names and the
2 additional search terms.

3 And then on May 27th we received the
4 letter from Mr. Mulroy which essentially ignored the
5 May 17th letter, and we wrote a response on June 18th
6 to Mr. Mulroy's letter indicating that we did not
7 agree to the proposal that he had set forth in his
8 May 27th letter and that they had not included the
9 employee names and search terms that were included in
10 the appendix to our May 17th letter.

11 JUDGE SAINSOT: So what do you want me to do
12 about all that?

13 MR. JOLLY: Well, I don't necessarily know that
14 I want you to do anything. I just want to make the
15 record clear.

16 JUDGE SAINSOT: Okay. Just asking.

17 MR. JOLLY: But just so you know, Peoples has
18 not engaged us, they have not responded to this.
19 Assuming that we can reach some kind of an agreement
20 as to how they're going to do this search and that
21 they would include these additional terms, I'm not
22 certain that there needs to be -- that you need to do

1 anything.

2 However, I just want to make the
3 record clear that the discussion that Mr. Mulroy --
4 the process that he's been laying out, we were not
5 involved in those discussions at all. And to the
6 extent that there's some search that doesn't include
7 these terms or these names, then we may come to you
8 asking for relief.

9 JUDGE SAINSOT: So what's the posture here?
10 I'm a little unclear about my role in this, not that
11 I want to have one. Let's make that clear.

12 MR. MULROY: As of this moment, you have no
13 role.

14 If I left the impression that I
15 reached any agreement with anybody, that impression
16 should be wiped off the record. We didn't. We did a
17 search in the fastest and most economical way that we
18 could in which we thought covered as much of the
19 request as we could do, and it cost us an enormous
20 amount of money and an enormous amount of people
21 hours.

22 We didn't reach agreement with Staff.

1 We told Staff, just like we told the intervenors,
2 what we were going to do. Staff said we want you to
3 do this additional search. We searched some more
4 names. Now we're discussing whether we should search
5 more words.

6 If we can't reach agreement, then I
7 would like to present it to you in kind of a
8 nonadversarial way where you can listen to both sides
9 and then tell us what you want us to do going
10 forward. I need to bring this electronic thing to a
11 close. We've been working on --

12 JUDGE SAINSOT: I'm a little unclear about
13 nonadversarial and both sides presented by lawyers.
14 How do you do that?

15 MR. MULROY: We don't do that. It was a pipe
16 dream.

17 MR. BRADY: Your Honor, I guess the relevance
18 at least in my view of why it's timely to raise this
19 issue at this point is July 28th is our date that is
20 contingent on us staying with our schedule and being
21 able to get all our discovery in line and so forth.

22 And these discussions are continuing

1 to go on, and the likelihood of not being able to
2 have that July 28th date satisfactorily met since we
3 are still in negotiations and we're still having --
4 we haven't -- the parties haven't even received the
5 documents yet, we haven't received what we view as a
6 complete response to our POL 16 set which would be
7 the remainder of these electronic documents.

8 So I guess it's more foreshadowing the
9 idea that we -- that the July 28th date is probably
10 not going to be met because right now, as I said,
11 with Staff, we have not had the opportunity -- we
12 can't access the documents that we have -- the
13 electronic -- the DVDs and CDs we've been given of
14 the electronic documents, we've had them for -- it's
15 the seventh so whatever that is, nine, ten days.
16 We've been loading them. We've loaded a large number
17 of them, but only a third of them are readable.

18 So we're running into some IT problems
19 which we have to get resolved before we can actually
20 sit down and even review those documents to then
21 determine how we're going to proceed if there's any
22 other data request questions that would come out of

1 that and even get resolved what's going on with
2 depositions.

3 JUDGE SAINSOT: All right. Is this rebuttal
4 testimony that's due on the 28th?

5 MR. BRADY: It would be additional direct with
6 rebuttal testimony. That would be due, I believe --

7 MS. SODERNA: September 8th.

8 MR. BRADY: -- September 8th.

9 JUDGE SAINSOT: And what's due -- what's
10 July 28th again?

11 MR. BRADY: July 28th was the date we were
12 trying to get all of our discovery wrapped up so that
13 we had six weeks to prepare our September 8th
14 testimony. However, if discovery can't get wrapped
15 up by the July 28th date -- Staff had agreed to a
16 contingent -- Staff agreed to the schedule contingent
17 on our ability to wrap up discovery by July 28th.
18 And with July 28th approaching and we are having
19 problems with accessing these electronic documents
20 and so forth in discovery --

21 JUDGE SAINSOT: Not only that, you might not
22 get the documents from Ms. Klyasheff until after

1 July 28th.

2 MR. BRADY: Right.

3 JUDGE SAINSOT: So you want me to extend the
4 deadline? I'm getting all these suggestions.

5 MR. BRADY: Right, right.

6 JUDGE SAINSOT: I'm not getting motions. I'm
7 just getting suggestions here.

8 MR. BRADY: Well --

9 MS. SODERNA: Considering Peoples -- you set
10 the schedule such that Peoples' response and
11 supplemental requests, August 5th. The July 28th
12 date contemplated having all discovery responses
13 received by all of the parties, if I understand it
14 correctly.

15 JUDGE SAINSOT: Uh-huh.

16 MS. SODERNA: And because -- just by virtue of
17 you extending their date of response to the
18 supplemental requests for August 5th, that extends it
19 at least for that purpose until August 5th. But we
20 haven't obviously yet even received the electronic
21 data nor do we know when we will. So it's hard to
22 set a firm date, I think, at this point unless you

1 want to give Peoples a cutoff for when they --

2 JUDGE SAINSOT: Well --

3 MS. SODERNA: -- should submit that to us.

4 JUDGE SAINSOT: Why don't we have a status

5 hearing. Obviously Peoples is -- you're still

6 working on this electronic data issue, so we're going

7 to have to extend it for the sake of all or both

8 sides of the fence.

9 Let me get my date book, and we'll

10 figure out something. Maybe before -- right before

11 September 8th. Does that sound reasonable?

12 (Whereupon, a recess was taken.)

13 JUDGE SAINSOT: So for the record I'm going to

14 extend the discovery cutoff until further notice.

15 Why don't we have something -- do we have anything

16 scheduled in this case in August?

17 MR. BRADY: No.

18 MS. SODERNA: No.

19 MR. WEGING: No.

20 JUDGE SAINSOT: Okay. Does somebody have the

21 schedule for this case on hand? I just want to see

22 how everything jogs together.

1 MS. SODERNA: September 8th, Staff, intervenors
2 additional direct is due. October 6th, the company
3 rebuttal. October 18th, pretrial memo.
4 October 19th, settlement conference. 20th, status.
5 JUDGE SAINSOT: You saw that I changed the 18th
6 to the 19th for the settlement conference?
7 MS. SODERNA: Uh-huh.
8 JUDGE SAINSOT: So if we have something, let's
9 say, I don't know, the week of August 23rd, a status
10 hearing or should I -- maybe sooner. Sooner I'm
11 thinking for you.
12 MR. MULROY: (Nodding head up and down.)
13 JUDGE SAINSOT: Okay. Well, the week of
14 August 9th is wide open. I was going to leave town,
15 but then I changed my mind so. . .
16 MR. BRADY: It's wide open for me.
17 JUDGE SAINSOT: Right.
18 MS. SODERNA: Me too.
19 MR. CLARKE: Me too.
20 JUDGE SAINSOT: Okay. How about --
21 MR. BRADY: 12th.
22 JUDGE SAINSOT: The 12th. How about 1:00?

1 MR. MULROY: This is for a status?

2 JUDGE SAINSOT: Right. Does that give you

3 enough time or --

4 MR. MULROY: Yes. No. That's fine.

5 MR. BRADY: At what time?

6 JUDGE SAINSOT: 1:00.

7 MR. MULROY: I know you have a secret plan to

8 end the war like Nixon did, but we've gotten, for

9 instance, in the last two weeks a bunch more

10 discovery requests. And for us to answer those, of

11 course, it takes us out past the cutoff. Now, is

12 this, like, going to be the eternal discovery case

13 where the day before discovery cuts off, we get 70

14 more requests? I mean, is there, like, an end in

15 sight or is it too early to tell? I don't see

16 discovery ever ending.

17 JUDGE SAINSOT: I share your concern. I don't

18 know how to resolve all of what's going on here other

19 than extending the discovery cutoff for you. But I

20 will say that I don't see -- let me think this a

21 little bit through -- at this point in time why there

22 needs to be new discovery. I think at this point we

1 should be having just all the discovery answered or
2 objected to. We shouldn't be propounding new
3 discovery.

4 MS. SODERNA: Judge, if I might, just one
5 potential reason why we might have -- and I'm not
6 saying we will -- we haven't seen the electronic
7 information, and there may be questions, specific
8 questions that arise pursuant to some of the
9 documents contained in there.

10 MR. CLARKE: I was going to make the exact same
11 point. We just haven't seen it yet, so it's hard to
12 say that we won't have any additional discovery
13 coming from 175 gigabytes worth of data that we're
14 about to receive.

15 MR. BRADY: Your Honor, if it helps at all, I
16 can give you a general outline of what Staff is
17 thinking about. It would be once we have an
18 opportunity to look at these electronic documents,
19 there may be clarifying questions. The last couple
20 of rounds of data requests we've issued have been
21 request questions asking for clarification of
22 documents that were in the 45 boxes of documents. So

1 once we receive the electronic documents, we would
2 have clarifying questions, and we're looking at
3 deposition as well.

4 That's kind of -- right now I can't
5 give you any firmer dates as far as how long it's
6 going to take us to get through these documents.
7 We're hoping to get the CDs and DVDs loaded up within
8 a week and a half. We're going to need time to
9 review all those documents. And I've asked Staff to
10 give me an estimate as to how long it takes to review
11 the documents. And I'm still trying to get a
12 ballpark handle on that so that we can actually give
13 you an idea of how long it's going to take us to
14 review these documents in preparation for, you know,
15 moving forward to getting testimony filed.

16 MR. MULROY: I sympathize with your work
17 because we have gone through the same work to answer
18 your request to produce all this. But you can see
19 our frustrations. It's kind of a never-ending thing.

20 I mean, for instance, if you can only
21 put two people on the project, this case will go on
22 and on and on. If you could put 20 people on it, it

1 will go faster. The timetable is kind of now in
2 their hands. Once they have the discovery, it's how
3 fast can they get through it and without a deadline
4 to meet.

5 MR. BRADY: I think our deadline is kind of
6 dictated by the scope of the proceeding and the fact
7 that we need to have our -- be able to satisfactorily
8 get through the documents to justify our position and
9 make our arguments.

10 JUDGE SAINSOT: One thing is for sure, I can't
11 bomb Cambodia, so let me think about this for a
12 moment.

13 MR. MULROY: Are you sure? Have you read the
14 statute?

15 MR. BRADY: We're not looking to extend this
16 thing out, you know.

17 JUDGE SAINSOT: Not that I would be in favor of
18 that. I'm just saying that -- you know, using the
19 Nixon thing.

20 MR. MULROY: They could use a good bombing.

21 MR. BRADY: So hopefully, your Honor, maybe by
22 the August 5th status hearing, I would be able to

1 give you a better idea as to where we're at with
2 handling these electronic documents.

3 MR. JOLLY: August 12th.

4 JUDGE SAINSOT: August 12th?

5 MR. BRADY: Don't we have a status hearing on
6 August 5th as well?

7 JUDGE SAINSOT: No. August 5th is when you get
8 the hard copies.

9 MR. BRADY: Okay. So then August 12th I'll
10 have a better idea of where we're at with having
11 access to electronic documents and how we were able
12 to work with it, and we at least need, you know, the
13 ability -- recognition of the ability to review it.

14 JUDGE SAINSOT: I understand that you need some
15 time.

16 I do think deadlines are good things,
17 though. Lawyers need deadlines. August 13th strikes
18 me as a good time to have a discovery cutoff in terms
19 of getting everything done. Anything propounded
20 needs to be propounded pretty darn soon. August 5th.

21 All right. Anything propounded, the
22 cutoff date to propound things will be August 11th.

1 That doesn't really work too well, does it? All
2 right. Let me think about this.

3 MR. MULROY: It's fine with us if you want to
4 do this at the next status, I mean, if you want to
5 try to do this at the next status.

6 JUDGE SAINSOT: Why don't we just leave at
7 least a cutoff for getting things answered to
8 August 13th and then we'll see where we are. But I
9 do think you're right, that we can't just hang loose
10 here.

11 MR. BRADY: That means we don't get a follow-up
12 to ask any data request questions on our review of
13 the electronic documents? Is that what you're
14 envisioning? That would be the effect that that --

15 MR. MULROY: Wait. I thought you wanted us to
16 answer by the 13th?

17 JUDGE SAINSOT: Right. They have to answer.

18 MR. MULROY: The burden is on us, not you.

19 MR. BRADY: Propounding questions?

20 JUDGE SAINSOT: No, no, no, no. I changed
21 that. I changed that. I said answering -- maybe I
22 didn't make myself clear -- answering questions that

1 were propounded by the 13th.

2 MS. SODERNA: Were propounded or any that will
3 be propounded in the next week?

4 MR. KUHN: That's the problem, your Honor,
5 because we've got on the 13th, like, an extra two
6 sets of data requests with the discovery cutoff being
7 the 28th. And so, you know, as we extend this, if
8 it's extended and everything is going to be asked
9 28 days out in front, that's one thing. If it's
10 extended to the 13th and we get data requests on the
11 11th or 12th, that becomes difficult to respond to.

12 So I think that sort of follows in
13 with CUB's concern about the propounding issue. But
14 from our point of view, you know, the presumption is
15 four weeks and we try and turn them out as soon as we
16 can. But as we get closer to the cutoff, we have
17 more requests that get a shorter response time.

18 JUDGE SAINSOT: All right. So instead of
19 having a status hearing on August 12th, why don't we
20 have it in two weeks, which is what? August 4th?

21 MR. BRADY: Okay.

22 JUDGE SAINSOT: Well, I could do that either at

1 3:00 or 11:00 or at 9:00. None of you seem to like
2 9:00, though.

3 MR. MULROY: 11:00.

4 MS. SODERNA: Fine with me.

5 JUDGE SAINSOT: 11:00.

6 All right. So for now we will leave
7 the Friday the 13th cutoff for discovery answers, and
8 then we'll see where we are on August 4th, but
9 discovery needs to end soon.

10 MR. CLARKE: Your Honor, if I may, I mean,
11 there's a lot of dates flying around and deadlines to
12 answer and propound. It's frankly going to be
13 extremely difficult for the AG, and I would assume
14 for the other parties, to review 175 gigabytes worth
15 of electronic data.

16 JUDGE SAINSOT: I understand. That's why I'm
17 checking up on you in two weeks and seeing how you're
18 going.

19 MR. CLARKE: Okay.

20 JUDGE SAINSOT: Rather than leave you out
21 there.

22 MR. CLARKE: I would love to do it in four days

1 or something, but it's going to take a couple of
2 weeks, a month, to get through that volume of data in
3 a way that makes it meaningful to this case.

4 JUDGE SAINSOT: All right. Does that leave you
5 enough time for your electronic data issue if that
6 comes up?

7 MR. MULROY: Yes, yes.

8 JUDGE SAINSOT: I think that's a better way to
9 do it because then we can at least see where they are
10 and I can at least coax them to --

11 MR. MULROY: That's fine.

12 JUDGE SAINSOT: -- try and get it done.

13 MR. MULROY: I know you had this in mind but
14 the electronic response is on top of the paper that
15 we've already given. You're with me on that, right?
16 It's not a different request. It's on top of the
17 47 boxes or whatever it is that we turned over,
18 right? It's a continuing search in that universe.

19 JUDGE SAINSOT: Uh-huh.

20 MR. MULROY: Right? So they asked for Project
21 Aruba; they asked for paper and electronic.

22 JUDGE SAINSOT: Okay. Okay. Okay. Yeah.

1 Okay. Okay. Yeah.

2 MR. BRADY: So it's duplicative?

3 MR. MULROY: I've been saying that all along.

4 MR. BRADY: At least from our data requests,

5 that's not the intent of what electronic documents

6 would be but --

7 MR. MULROY: Whether it's the intent or not,

8 that's what it picks up. You can get -- you know,

9 you can get the same E-mail 500 times.

10 MR. BRADY: Uh-huh.

11 MR. MULROY: As you know.

12 JUDGE SAINSOT: The other thing is, Mr. Mulroy,

13 if you have a problem with something that's been

14 requested, please -- you know.

15 MS. SODERNA: They actually developed the

16 search methodology themselves so...

17 MR. BRADY: I think we have an objection to

18 that.

19 MS. SODERNA: They're the ones who presented

20 that search methodology to us.

21 MR. MULROY: Now, you don't mean methodology;

22 you mean what was searched.

1 MS. SODERNA: Well, in addition to the
2 methodology. I mean, the way that you went about
3 responding to the electronic portion of your
4 responses to our data requests, that's something that
5 you suggested.

6 MR. MULROY: Okay. But the way I described
7 earlier what we did is what we did. We searched, I
8 think, 30 or 40 people's computers and 30 or 40 words
9 on those computers.

10 MS. SODERNA: Right. That's right.

11 MR. REDDICK: I think what she's saying,
12 though, is for Project Aruba, for example -- I don't
13 know because we haven't been told what's available to
14 you -- but it's perfectly reasonable, I think, in
15 response to what Staff asked to say give me documents
16 that have Aruba but not vacation.

17 MR. KUHN: How would you draft that?

18 JUDGE SAINSOT: Yeah, but then they would have
19 to go through all those documents.

20 MR. WEGING: Earlier on we had discussions to
21 make sure they don't go to their human resources
22 department looking because we don't think there's

1 anything related to gas purchasing.

2 MR. MULROY: There's a lot of angst in the
3 room, but I think that we're much closer than you may
4 think.

5 MR. JOLLY: We don't know. We haven't been
6 involved.

7 MR. MULROY: I'm not asking you to agree.
8 That's my opinion.

9 JUDGE SAINSOT: Who is you?

10 MR. MULROY: You.

11 JUDGE SAINSOT: Me?

12 MR. MULROY: Contrary to what you may think.

13 JUDGE SAINSOT: Is there anything else?

14 All right. I'll see you in two weeks
15 then.

16 (Whereupon, the above-entitled
17 matter was continued to
18 August 4, 2004, at 11:00 a.m.)

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